



# Civil Resolution Tribunal

Date Issued: June 27, 2019

File: ST-2018-006989

Type: Strata

Civil Resolution Tribunal

Indexed as: *Berman v. The Owners, Strata Plan EPS2470 et al.*, 2019 BCCRT 775

**B E T W E E N :**

Shoshana Berman

**APPLICANT**

**A N D :**

The Owners, Strata Plan EPS2470 and Mario Plante

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Graeme Nunn

### **INTRODUCTION**

1. The applicant, Shoshana Berman (owner), is the co-owner of strata lot 9 in the respondent, The Owners, Strata Plan EPS2470 (strata). The respondent, Mario Plante, is a resident of the strata and a neighbour of the applicant. The applicant and Mr. Plante are self-represented. The strata is represented by a strata council member.

2. The strata is a bare land strata corporation in the District of Squamish. The strata's property includes 10 side-by-side strata lots, with parking for each strata lot contained within a driveway on the strata lot. Access is provided by means of a laneway, which is referred to as the Abbey laneway. Abbey laneway is shown as common property on the strata plan. Across the laneway is a separate 4 building strata (Strata Plan BCS 3975) known to the parties as Elements. Elements does not form part of the strata or its common property.
3. This is not the first dispute between the owner and the strata. The tribunal issued a prior decision indexed as *Berman v. The Owners, Strata Plan EPS2470*, 2019 BCCRT 179 (*Berman*).

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 121 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. Under section 10 of the Act, the tribunal must refuse to resolve a claim that it considers is not within the tribunal's jurisdiction. A dispute that involves one or more issues that are within the tribunal's jurisdiction and one or more that are outside its jurisdiction may be amended to remove those issues that are outside its jurisdiction.
7. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a

court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. Under section 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

9. The issues in this dispute are:
  - a. Should the strata be ordered to remove encroaching vegetation from the laneway?
  - b. Did the strata fail to enforce its parking bylaws?
  - c. Should the results of the special general meeting held on September 26, 2018 be overturned?
  - d. Should the strata should take any action against Mr. Plante for the altercation between himself and the owner?
  - e. Should Mr. Plante should be ordered to acknowledge he violated the owner's rights during the altercation?

## **BACKGROUND AND EVIDENCE**

10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the owner's claims.
11. The owner has been a co-owner of her strata lot since June 2016. Based on the evidence provided there is an apparent history of conflict between the owner and the other residents of the strata beginning as early as 2017. I will not detail specific allegations in my decision as they are not relevant to the analysis.

12. The strata's common property consists exclusively of the Abbey laneway. There are 10 bare land strata lots containing homes built along one side of the laneway. Parking is provided on paved driveways that abut the laneway in front of each home.
13. Maintenance of the vegetation in the Abbey laneway is at issue. The applicant provided several photographs dated July 2018 showing trees and weeds encroaching into the laneway. The strata provided photographs dated September 2018 and March 2019 showing the majority of the overgrown vegetation had been removed and the laneway clear.
14. Review of the strata plan also shows the overgrown areas to the right of the laneway are the property of the adjoining Elements strata corporation. The strata provided an email to the Elements strata representative dated August 2018 requesting trimming of the trees and other flora encroaching into the Abbey laneway.
15. The owner admits in her submissions that she was removing plants and trimming trees along the laneway. On June 4, 2018 the strata issued a warning letter to the owner requiring her to stop. No fine was issued.
16. On July 29, 2019 an altercation involving canine feces occurred between Mr. Plante, his guest and the owner. The strata has provided a copy of the RCMP report. The parties have also provided statements and submissions about the incident. Not unsurprisingly there are inconsistencies between the parties' versions of events and I see no need to recount the facts alleged. The RCMP report indicates the altercation was investigated and the officer that no action further action was required.
17. On August 21, 2018 the strata held its annual general meeting. The respondent provided the minutes of the meeting in evidence. At that meeting discussion of an amendment to the parking bylaws was discussed and put forward to a special general meeting to be held in September 2018.

18. On September 26, 2018 the strata held a special general meeting to change its parking bylaws. At that meeting the strata owners voted to amend strata bylaw 3(10) to read as follows:

- a. An owner, tenant or occupant shall not park, or allow to be parked on the owner's strata lot (except in the garage or enclosed area on the strata lot), on common property and limited common property, including roads, driveways, walkways and common use facilities, any boats, recreational vehicles, trailers, oversized vehicles or motor vehicles (other than licensed and insured motor vehicles for the current use of the owner, tenant or occupant of the strata lot or visitors' motor vehicles). Owners are permitted to park two commercial vehicles on their strata lot including on their driveway if the vehicles are used daily and are the primary vehicle used for work purposes. Owners are also permitted to have commercial vehicles parked on their driveways if the commercial vehicles are there to do work on behalf of the owner.

19. The revised bylaw 3(10) was filed with the Land Title Office on October 18, 2018.

20. Prior to September 26, 2018 bylaw 3(10) read as follows:

- a. An owner, tenant or occupant shall not park or allow to be parked on the owners strata lot (except in the garage or enclosed area on the strata lot) on the common property and limited common property, including roads, driveways, walkways and common use facilities, any boats, recreational vehicles, trailers, commercial vehicles, oversized vehicles or motor vehicles (other than licensed and insured vehicles for the current use of the owner, tenant or occupant of the strata lot or the visitors' motor vehicles).

21. The owner provided 2 photographs both dated in August 2018 showing a small van with what appears to have the logo of a security company on it. The van was parked

in the driveway of a strata lot. The strata provided two photographs showing a vehicle overhanging from the owner's strata lot into the laneway.

22. On February 15, 2019 the tribunal release its decision in *Berman*. Several of the issues in that dispute were resolved by consent prior to the decision being issued.

## **POSITION OF THE PARTIES**

23. The owner submits that the strata is failing to enforce its bylaws. She says that it has not done enough to keep the laneway clear of vegetation and commercial vehicles. She also says that the results of the special general meeting on September 26, 2018 should be overturned and that strata should discipline Mr. Plante for his role in their altercation. The owner says that Mr. Plante should acknowledge that he violated her rights during the altercation.
24. The owner argues that the strata council has been acting in its own interests and not in the interests of the owners. She also argues that the strata has failed to enforce its bylaws and should be ordered to do. She argues that the September 26, 2018 meeting was not valid as she had complaints regarding that bylaw before the tribunal and the strata council members have acted and continue to act in a conflict of interest.
25. The owner requests that I order the respondents pay her tribunal fees.
26. The strata argues that the laneway has been cleared of overhanging vegetation and that even it had not been, the vegetation is not on the strata's common property. The strata argues that issues relating to the parking bylaws have been addressed. The strata says that it puts out a bi-annual notice regarding parking rules and takes reasonable steps to ensure its bylaws are enforced. The strata argues the September 26, 2018 meeting was completed in accordance with the *Strata Property Act* (SPA) and that it was valid. The strata says it should have no involvement with the altercation between the owner and Mr. Plante. The strata argues that the incident took place on private property and was dealt with by the RCMP.

27. Mr. Plante disputes the owner's version of the events of the altercation between them on July 29, 2018. Mr. Plante argues that he was not directly involved in the altercation and therefore not responsible.
28. The respondents request I dismiss the owner's claims.

## **ANALYSIS**

### ***Should the strata be ordered to remove encroaching vegetation from the laneway?***

29. Under section 72 of the SPA, the strata must maintain and repair the common property of the strata corporation. In this case the common property of the strata is limited to the Abbey laneway.
30. Based on the evidence provided I find that the strata has taken reasonable steps to ensure the laneway is clear of encroaching vegetation. In making this finding I rely on the photographs provided by the strata showing the cleared laneway. I find the fact these photos are dated later in time than the ones provided by the owner particularly convincing. I also rely on the request the strata provided to the Elements strata corporation to remove the problematic vegetation.
31. The strata is only responsible for maintaining its own common property. The SPA schedule of standard bylaws (standard bylaws) applies to the strata corporation. Bylaw 6 of the standard bylaws requires an owner to obtain written permission before altering common property. The owner did not have permission to alter the common property of the strata or of the adjoining Elements strata corporation and was issued a warning. Unless permission is granted by the strata, the owner must not alter the common property including weeding or trimming vegetation. Further, the strata cannot remove vegetation from the common property of the Elements strata corporation unless it encroaches onto the strata's common property or it has permission. Such a restriction on vegetation removal on adjoining property would also extend to the owner, despite her good intentions.

32. The strata is required to remove encroaching vegetation on an ongoing basis. The strata has done so in the past and there is no evidence before me to conclude it will not continue to do so. I dismiss the owner's claim on this issue.

***Did the strata fail to enforce its parking bylaws?***

33. Section 26 of the SPA requires the strata council fulfill the duties of a strata corporation, including bylaw enforcement. Section 133 of the SPA allows the SPA to do what is reasonably necessary in order to enforce its bylaws and rules.

34. The strata has some discretion when enforcing its bylaws. This principle was explored by my colleague in *Berman* so I will not reiterate it here. In particular the strata does not need to enforce a bylaw, even in the case of a clear breach, where the effect of that breach is trifling. There are three considerations when deciding if relief should be granted to an applicant alleging failure to enforce bylaws: the number of owners seeking relief, whether the order sought was in the best interests of the strata corporation, and whether inaction would prejudice the applicant.

35. The owner says that the strata has failed to enforce its bylaws in two ways. First, the owner says that the strata did not enforce bylaw 3(10) by allowing other residents to park commercial vehicles on their strata lots. The owner has provided photographs of an alleged commercial vehicle parked on a strata lot. Second, the owner says the strata has failed to enforce its bylaws by allowing owners to park their vehicles overhanging into the laneway which also serves as a fire lane.

36. I will consider the analysis regarding the commercial vehicle bylaws first.

37. As to the first stage of the analysis, the applicant is the only one seeking relief. As in *Berman* this weighs against granting the relief sought.

38. As to the second stage of the analysis, by passing bylaw 3(10) the strata has shown that it is in its interest that commercial vehicles are not parked on strata lots. However, there is no definition of what constitutes a commercial vehicle in the bylaw. Further, prior to the September 2018 amendment, the bylaw specifically allowed motor vehicles that were licensed and insured vehicles for the current use



of the owner, tenant or occupant. The amendment added additional clarification to the bylaw by expressly allowing residents to park daily use commercial vehicles on their strata lot. Residents are also allowed to have commercial vehicles parked on their strata lot which are completing work on their behalf. The pictures provided by the owner show a van advertising a security company parked on the driveway of a strata lot. I do not have enough evidence to determine the reason the vehicle is parked there, or if it is a daily use vehicle. The van appears to be licensed. The van in the photograph is not obstructing the laneway. I am also unable to determine that a vehicle is “commercial” simply by the fact it advertises a business. It is undoubtedly in the strata corporation’s best interest that their parking bylaws be enforced. However, I find there is insufficient evidence to conclude a breach of the bylaw occurred in this situation. This weighs against granting the relief sought.

39. As to the third stage of the analysis, the owner will not suffer any prejudice if her relief is not granted. The strata has provided evidence showing it provides reminders to owners regarding its parking bylaws. It also took steps to clarify allowable parking by amending bylaw 3(10). Finally, based on the evidence I am unable to conclude that the strata has generally failed to enforce its parking bylaws. Taking these considerations into account, I find that this also weighs against granting the relief sought.
40. The strata’s bylaws strike a balance between competing parking needs of the residents. In these circumstances I find that ordering the relief sought would not be appropriate. While there is nothing before me to indicate the strata is not doing so, the strata should enforce its bylaws both consistently and reasonably. I dismiss the owner’s claim on this point.
41. The owner also requests that the strata enforce the bylaw banning overhanging vehicles in the laneway. I have reviewed the strata bylaws and note that there is not a specific bylaw dealing with that subject matter.
42. Standard bylaw 3(1)(a) requires that a strata lot must not be used in a way that causes a hazard to another person. Bylaw 3(1)(d) states a strata lot must not be

used for anything illegal. The photographs provided by the strata indicate that the owner had a van parked on her strata lot overhanging into the laneway. The photos are dated May and September 2018. The owner was not fined in those instances.

43. The parties agree that the Abbey laneway is a fire lane and must be kept clear. I find that allowing vehicles to park in or obstruct the laneway constitutes a violation of the bylaws 3(1)(a) and (d) and that the strata must take steps to ensure these bylaws are enforced. I further find that the strata has taken steps to ensure that the laneway is kept clear as evidenced by the winter reminder notice provided. The strata should continue to ensure the laneway is not obstructed and may continue to exercise reasonable discretion when doing so.
44. While I have found that the strata must ensure the laneway is kept clear I have not found that they have failed to do so. I dismiss the owner's claim on this point.

***Should the results of the special general meeting be overturned?***

45. On September 26, 2018 a special general meeting was held to amend bylaw 3(10).
46. I have reviewed the evidence provided by the parties in relation to the meeting. I find that notice was given as required by the SPA and the bylaws. I further find that the result of the vote to amend bylaw 3(10) was greater than the  $\frac{3}{4}$  majority required. There is no evidence of irregularities with the procedure of the meeting.
47. The owner argues that the results of this meeting should be overturned because she had outstanding issues before the tribunal when it was held. This argument was not persuasive. If a strata were not allowed to conduct business while matters were outstanding with the tribunal, the result would be the effective paralysis of any strata corporation at the hands of a single litigant. Since I have found no issue with the meeting, I dismiss the owner's claim on this point.

***Should the strata should take any action against Mr. Plante for the altercation between himself and the owner?***

48. On July 29, 2018 an altercation occurred between Mr. Plante, his guest and the owner. I have reviewed the statements provided as well as the police report. The accounts of the altercation are varied. The RCMP report indicates that an investigation was completed but no additional action was taken against any party.
49. The strata council is responsible for operating the strata corporation. It is not generally the role of a strata corporation to deal with personal disputes between individual residents unless those disputes breach a bylaw or rule. The strata council did not determine the altercation was a breach of the bylaws. However, the strata issued Mr. Plante a warning regarding an off leash dog on the date of the altercation.
50. Given the conflicting accounts of events, the strata's actions and the RCMP's determination that no further action was required, I find the strata had no further obligation to act. I dismiss the owner's claim on this issue.

***Should Mr. Plante should be ordered to acknowledge he violated the owner's rights during the altercation?***

51. The owner says that the altercation between herself and Mr. Plante was unacceptable behaviour, violation of her rights as a person and violation of the SPA. The altercation was an unfortunate incident for all involved. It is clear that no party is blameless. However, the relief sought by the owner is beyond my jurisdiction under section 121(1) of the Act. I therefore decline to make any order.
52. In the event I am wrong regarding jurisdiction, I note I would decline to make any order based on the evidence in any event. The RCMP determined that no further action was necessary and I see no reason to second guess that conclusion.

## **DECISION AND ORDERS**

53. I dismiss the owner's claims on issues A, B, C and D and decline to make an order on issue E.
54. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The respondents were successful in this dispute but did not pay tribunal fees and have not submitted any evidence of expenses. I therefore make no order with respect to tribunal fees and expenses.
55. Under section 189.4 of the SPA, an owner who brings a tribunal claim against a strata corporation is not required to contribute to any monetary order issued against the strata corporation or to any expenses the strata corporation incurs in defending the claim. I order the strata to ensure that no expenses incurred by the strata in defending this claim are allocated to the owner.

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Graeme Nunn, Tribunal Member